

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JERAMY MICHAEL STEVENS,
Plaintiffs,
v.
COUNTY OF NEVADA, et al.,
Defendants.

No. 2:23-cv-01830-KJM-CKD (PS)

FINDINGS & RECOMENDATIONS

Plaintiff Jeramy Michael Stevens proceeds pro se and in forma pauperis.¹ Plaintiff's second amended complaint and third amended complaint (entitled second) are before the court. (ECF Nos. 12, 13.) The court construes plaintiff's filing of the third amended complaint as a motion to amend the complaint. Given the liberal pleading standards afforded to plaintiff as a pro se litigant and the procedural posture of the case, leave to file the third amended complaint is granted. See Fed. R. Civ. P. 15(a). The third amended complaint (entitled second) (ECF No. 13) is the operative pleading.

The third amended complaint fails to state a claim. Because it clearly appears plaintiff will be unable to state a claim based on the relevant facts, the third amended complaint should be dismissed without further leave to amend.

¹ Because plaintiff proceeds without counsel, this action is referred to the undersigned by Local Rule 302(c)(21) pursuant to 28 U.S.C. § 636.

1 **I. SCREENING REQUIREMENT**

2 Pursuant to 28 U.S.C. § 1915(e), the court must screen every in forma pauperis
 3 proceeding, and must order dismissal of the case if it is “frivolous or malicious,” “fails to state a
 4 claim on which relief may be granted,” or “seeks monetary relief against a defendant who is
 5 immune from such relief.” 28 U.S.C. § 1915(e)(2)(B); Lopez v. Smith, 203 F.3d 1122, 1126-27
 6 (2000). In performing this screening, the court liberally construes a pro se plaintiff’s pleadings.
 7 See Eldridge v. Block, 832 F.2d 1132, 1137 (9th Cir. 1987).

8 **II. ALLEGATIONS IN THE THIRD AMENDED COMPLAINT**

9 Plaintiff seeks relief for alleged violations of his rights in connection with “an extreme
 10 form of complicit bias”² held against him by all defendants “in favor of the opposing party in two
 11 highly sensitive and highly contested family law matters” in the Nevada County Superior Court:
 12 FL21-016798 (the domestic violence “DV” matter) and FL-21016904 (the elder abuse “EA”
 13 matter). (See ECF No. 13, ¶ 11.)

14 The third amended petition’s allegations are fairly summarized as follows: Deputy
 15 Mackey and John Doe served plaintiff’s “first papers of legal process” in the EA matter. (ECF
 16 No. 13, ¶ 12.) According to the proof of service attached to the amended complaint, this occurred
 17 on November 28, 2021. (See id. at p. 16.) Mackey and Doe served plaintiff with the EA-109
 18 Notice of Hearing only and omitted other papers that were required to be served and which
 19 contained important information for the protection of plaintiff’s rights. (Id., ¶¶ 12, 16) This
 20 happened even though the petitioner in the EA had made all mandated legal notice readily
 21 available according to later testimony given under oath. (Id., ¶¶ 12, 40.) Defendant Mackey knew
 22 or should have known that additional documents as set forth in Cal. Welf. & Inst. Code §
 23 15657.03 were required to be served. (Id., ¶ 13.)

24 On November 29, 2021, two unknown courthouse employees refused plaintiff’s multiple
 25 requests to obtain the fair legal notice mandated by Cal. Welf. & Inst. Code § 15657.03(k). (ECF
 26 No. 13, ¶ 21.) At the time, the public counter was closed to the COVID-19 pandemic and

27 ² The court omits italicization and other emphasis when quoting allegations from the amended
 28 complaint.

1 plaintiff's only option was to send an email request to the clerk's office. (Id., ¶ 22.)

2 On January 10, 2022, defendant Marianna Brewer conspired and acted in concert with
3 other unknown courthouse employees to intentionally not process plaintiff's original filing of
4 Judicial Council form EA-115, Request to continue Hearing. (ECF No. 13, ¶ 25.) California
5 Government Code § 68511 mandates the EA-115 form is to be used by all parties and "must be
6 accepted for filing by all courts." (Id., ¶ 26.) Defendant Brewer's omissions deprived plaintiff of
7 his statutory entitlement under Cal. Welf. Inst. Code § 15657.04(m) to continue the EA matter.
8 (Id., ¶ 28.) Plaintiff received, first, a confirmation of receipt of his filing which led him to believe
9 it had been filed, and an hour and forty minutes later received a "fraudulent new confirmation of
10 receipt purporting that 'due to the impacts [COVID-19], we are experiencing delays in our mail
11 processing' and that [plaintiff] could only ever 'expect 2 to 3 weeks for [his] documents to be
12 processed[.]'" (Id., ¶ 31.)

13 On or around Friday, March 11, 2022, defendant Brandi Jones conspired and acted in
14 concert with other unknown courthouse employees to not timely process plaintiff's original filing
15 of Judicial Council form EA-600, Request to Modify/Terminate Order. (ECF No. 13, ¶ 32.)
16 California Government Code § 68511 mandates the EA-600 form is to be used by all parties and
17 "must be accepted for filing by all courts." (Id., ¶ 33.) This "effectively deprived [plaintiff] of
18 [his] fundamental right to be heard...." (Id., ¶ 35.) Defendant Jones emailed plaintiff a
19 "fraudulent communication purporting a two-month delay in processing new filings as an attempt
20 to manipulate and negatively impact [plaintiff]."
21 (Id., ¶ 37.)

Defendant Sheriff Shannon Moon failed to adopt policies, customs, or practices necessary
to ensure constitutionally adequate service of legal process pertaining to petitions for temporary
restraining orders. (ECF No. 13, ¶¶ 38-39.) This was evident because Deputy King proclaimed
"those forms are not required for service" when providing only the DV-109 on service for the DV
matter, and the claim was repeated by an unknown representative in Sheriff Moon's Civil Bureau
Unit, as well as by Deputies Mackey and Doe when serving process on the EA matter. (Id., ¶ 40.)

In the third amended complaint, plaintiff brings claims for alleged civil rights violations
under 42 U.S.C. §§ 1985(2), 42 U.S.C. §§ 1985(3), 42 U.S.C. § 1986, the Due Process and Equal

1 Protection Clauses of the Fourteenth Amendment to the United States Constitution, and state law
2 claims. (See ECF No. 13 at 1.) Defendants are Marianna Brewer, Brandy Jones, Shannon Moon,
3 Jason Mackey, the County of Nevada, and unknown Doe defendants. (*Id.*, ¶¶ 6-10.)

4 **III. PLEADING STANDARDS**

5 A complaint must contain “a short and plain statement of the claim showing that the
6 pleader is entitled to relief....” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are not
7 required, but “[t]hreadbare recitals of the elements of a cause of action, supported by mere
8 conclusory statements, do not suffice[.]” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Bell*
9 *Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). While factual allegations are accepted as
10 true, legal conclusions are not. *Iqbal*, 556 U.S. at 678. Courts “are not required to indulge
11 unwarranted inferences[.]” *Doe I v. Wal-Mart Stores, Inc.*, 572 F.3d 677, 681 (9th Cir. 2009)
12 (internal quotation marks and citation omitted).

13 Pro se litigants are entitled to have their pleadings liberally construed and to have any
14 doubt resolved in their favor, *Eldridge*, 832 F.2d at 1137, but a plaintiff’s claims must be facially
15 plausible to survive screening. Facial plausibility for a claim requires sufficient factual detail to
16 allow the court to reasonably infer that a named defendant is liable for the misconduct alleged.
17 *Iqbal*, 556 U.S. at 678.

18 **IV. THE COMPLAINT FAILS TO STATE A CLAIM**

19 **A. 42 U.S.C. § 1985(2), 42 U.S.C. § 1985(3), 42 U.S.C. § 1986**

20 “To state a claim for conspiracy to violate constitutional rights, the plaintiff must state
21 specific facts to support the existence of the claimed conspiracy.” *Olsen v. Idaho State Bd. of*
22 *Medicine*, 363 F.3d 916, 929 (9th Cir. 2004) (citation and internal quotations omitted).
23 Conclusory allegations that the defendants conspired and acted in concert to violate plaintiff’s
24 rights fail to state a claim. *See Twombly*, 550 U.S. at 555-557 (naked assertions, labels and
25 conclusions, and formulaic recitations of the elements of a cause of action do not suffice to state a
26 claim).

27 In addition, to state a claim under 42 U.S.C. section 1985(2) or 1985(3), plaintiff must
28 allege a conspiracy motivated by racial or class-based, invidious animus. *See Bray v. Alexandria*

1 Women's Health Clinic, 506 U.S. 263, 267-68 (1993) (section 1985(3)); Portman v. Cnty. of
 2 Santa Clara, 995 F.2d 898, 909 (9th Cir. 1993) (second clause of section 1985(2)).³ Here, plaintiff
 3 alleges he was discriminated against as a class of one. (ECF No. 8, ¶ 10.) The third amended
 4 complaint does not allege facts supporting the existence of a conspiracy motivated by racial or
 5 class-based, invidious animus. Plaintiff does not state a conspiracy claim under 42 U.S.C. §
 6 1985(2) or 42 U.S.C. § 1985(3).

7 In addition, “[a] cause of action is not provided under 42 U.S.C. § 1986 absent a valid
 8 claim for relief under section 1985.” Trerice v. Pedersen, 769 F.2d 1398, 1403 (9th Cir. 1985).
 9 Because plaintiff does not state a valid claim for relief under 42 U.S.C. § 1985, he likewise fails
 10 to state a claim under 42 U.S.C. § 1986.

11 **B. 42 U.S.C. § 1983**

12 A plaintiff may bring an action under 42 U.S.C. § 1983 to redress violations of “rights,
 13 privileges, or immunities secured by the Constitution and [federal] laws” by a person or entity,
 14 including a municipality, acting under the color of state law. 42 U.S.C. § 1983. To state a claim
 15 under 42 U.S.C. § 1983, a plaintiff must show (1) the defendant committed the alleged conduct
 16 while acting under color of state law; and (2) the plaintiff was deprived of a constitutional right as
 17 a result of the defendant’s conduct. Balistreri v. Pacifica Police Dep’t, 901 F.2d 696, 699 (9th Cir.
 18 1988). A government entity may be held liable under 42 U.S.C. § 1983 when execution of a
 19 government’s policy or custom inflicts the plaintiff’s injury. See Monell v. New York City Dept.
 20 of Social Servs., 436 U.S. 658, 689-91 (1977). Here, plaintiff alleges violations of the Due
 21 Process Clause and Equal Protection Clause of the Fourteenth Amendment.

22 **1. Due Process**

23 To state a claim for a violation of procedural due process, a plaintiff must allege (1) a
 24 deprivation of a constitutionally protected liberty or property interest, and (2) a denial of adequate

25
 26 ³ Section 1985(2) contains two clauses that give rise to separate causes of action. Portman, 995
 27 F.2d at 908. It is not necessary to allege the conspiracy was under color of state law or motivated
 28 by racial or other class-based discriminatory animus under the first clause of section 1985(2), but
 28 the first clause concerns access to federal courts and, as such, is not applicable here. See Portman,
 28 995 F.2d at 909.

1 procedural protections. Kildare v. Saenz, 325 F.3d 1078, 1085 (9th Cir. 2003); see also Bd. of
 2 Regents v. Roth, 408 U.S. 564, 569-70 (1972). “[N]o single model of procedural fairness, let
 3 alone a particular form of procedure, is dictated by the Due Process Clause.” Kremer v. Chem.
 4 Const. Corp., 456 U.S. 461, 483 (1982). Due process does demand, however, an opportunity to be
 5 heard “at a meaningful time and in a meaningful manner.” Armstrong v. Manzo, 380 U.S. 545,
 6 552 (1965).

7 To state a substantive due process claim, a plaintiff must allege “a state actor deprived
 8 [him] of a constitutionally protected life, liberty, or property interest” in such a way that ‘shocks
 9 the conscience’ or ‘interferes with rights implicit in the concept of ordered liberty.’” Nunez v.
 10 City of Los Angeles, 147 F.3d 867, 871 (9th Cir. 1998) (quoting Rochin v. California, 342 U.S.
 11 165, 172 (1952)). Not all property interests are protected by substantive due process. Regents of
 12 Univ. of Mich. v. Ewing, 474 U.S. 214, 229 (1985) (J. Powell, concurring).

13 Here, plaintiff alleges he had legitimate claims of entitlement to his leased residence and
 14 personal property. (ECF No. 13, ¶ 18.) He also alleges Deputy Mackey deprived him of his
 15 entitlement to have additional documents served for the EA matter as set forth in Cal. Welf. &
 16 Inst. Code § 15657.03. He further alleges defendant Brewer deprived him of his rights under Cal.
 17 Gov’t Code § 68511 and Cal. Welf. & Inst. Code § 15657.03(m) when his judicial council forms
 18 were not accepted for timely filing.

19 Plaintiff has not identified a fundamental liberty or property interest protected by the
 20 substantive due process clause of which he was deprived. The interests protected by substantive
 21 due process are those fundamental rights under the federal constitution that are “deeply rooted in
 22 this Nation’s history and tradition.” Franceschi v. Yee, 887 F.3d 927, 937 (9th Cir. 2018). These
 23 include marriage, procreation, contraception, family relationships, child rearing, education, and a
 24 person’s bodily integrity. Id. Plaintiff also has not plausibly alleged the deprivation of a
 25 fundamental right in a way that shocks the conscience. Accordingly, plaintiff fails to state a claim
 26 for a violation of substantive due process.

27 The court will assume for screening purposes that plaintiff had a liberty or property
 28 interest in his leased residence and personal property. However, the operative complaint does not

1 plead factual allegations that plaintiff was deprived of any interest in his leased residence and/or
 2 personal property.⁴ But even assuming plaintiff was deprived of his leased residence and/or
 3 personal property beginning on or about November 28, 2021, when Deputy Mackey served the
 4 first papers of legal process in the EA matter, plaintiff does not plausibly allege the deprivation
 5 occurred without constitutionally adequate procedural protections.

6 The Elder Abuse Act, Cal. Welf. & Inst. Code, § 15600, et seq., authorizes the issuance of
 7 a temporary restraining in accordance with Section 527 of the Code of Civil Procedure upon the
 8 filing of a petition. Cal. Welf. & Inst. Code, § 15657.03(d). Subsequently, after notice and a
 9 hearing, the court is authorized issue a restraining order having a duration of not more than five
 10 years. Cal. Welf. & Inst. Code, § 15600(i)(1).

11 To the extent plaintiff alleges, generally, that he was deprived of the requirements of due
 12 process, including legal notice, an opportunity to be heard, and a decision by a neutral decision-
 13 maker (see, e.g., ECF No. 13, ¶¶ 43-44), those are conclusory allegations that do not assist in
 14 stating a claim. See Iqbal, 556 U.S. at 678. The third amended complaint does not contain factual
 15 allegations plausibly suggesting plaintiff was denied an opportunity to be heard in a meaningful
 16 time and in a meaningful manner, which is the fundamental requirement of due process. See
 17 Armstrong, 380 U.S. at 552.

18 Moreover, plaintiff does not plausibly allege he was denied the procedural protections of
 19 Cal. Welf. & Inst. Code § 15657.03(k) in violation of his federal right to due process. That
 20 subsection provides

21 [u]pon the filing of a petition for protective orders under this section,
 22 the respondent shall be personally served with a copy of the petition,
 23 notice of the hearing or order to show cause, temporary restraining
 24 order, if any, and any declarations in support of the petition. Service
 25 shall be made at least five days before the hearing. The court may,
 on motion of the petitioner or on its own motion, shorten the time for
 service on the respondent.

26 Cal. Welf. & Inst. Code § 15657.03(k). Specifically, plaintiff does not allege he did not receive

27 ⁴ In the original complaint, plaintiff alleged he was removed from his residence on November 28,
 28 2021. (See ECF No. 1 at 17.) The operative complaint does not include a similar allegation.

1 all documents required by Cal. Welf. & Inst. Code § 15657.03(k) at least five days before any
2 hearing, which is the essence of the protection afforded by that subsection.

3 But even if plaintiff had a state-created right regarding some procedural aspect of service
4 of process which was not met, “not all state-created rights rise to the level of a constitutionally
5 protected interest[.]” Brady v. Gebbie, 859 F.2d 1543, 1548 n. 3 (9th Cir. 1988). A state law must
6 satisfy two requirements in order to create a liberty interest protected by the Constitution. “First,
7 the law must set forth substantive predicates to govern official decision making and, second, it
8 must contain explicitly mandatory language, i.e., a specific directive to the decision maker that
9 mandates a particular outcome if the substantive predicates have been met.” Valdez v.
10 Rosenbaum, 302 F.3d 1039, 1044 (9th Cir. 2002) (internal citations and quotations omitted).

11 Subsection (k) of Cal. Welf. & Inst. Code § 15657.03 does not set forth substantive
12 predicates to govern official decision making or mandate an outcome to be reached upon a
13 finding that the relevant criteria have been met. Neither do the other statutes put forth in the third
14 amended complaint create a constitutionally protected interest of which plaintiff was deprived:

15 The Judicial Council may prescribe by rule the form and content of
16 forms used in the courts of this state. When any such form has been
17 so prescribed by the Judicial Council, no court may use a different
18 form which has as its aim the same function as that for which the
19 Judicial Council’s prescribed form is designed. [....]

20 Cal. Gov’t Code § 68511.

21 The respondent [to an elder abuse petition filed under this section]
22 shall be entitled, as a matter of course, to one continuance, for a
23 reasonable period, to respond to the petition.

24 Cal. Welf. & Inst. Code § 15657.03(m).

25 While couched in mandatory terms, neither statute quoted above mandates a particular
26 substantive outcome, and neither creates a constitutionally protected interest. See Tony L. By &
27 Through Simpson v. Childers, 71 F.3d 1182, 1185-86 (6th Cir. 1995) (“The language of this
28 statute is undoubtedly mandatory. Furthermore, the statute mandates action based upon
substantive predicates. The claim of a state-created liberty interest fails, however, because no
particular substantive outcome is mandated.”). The court cannot elevate a state procedural

1 requirement to a constitutionally protected interest solely because it is couched in mandatory
2 terms, since obligatory governmental actions can serve various legitimate ends other than
3 conferring a constitutionally protected interest upon an individual. See Town of Castle Rock v.
4 Gonzales, 545 U.S. 748, 764-65 (2005); Olim v. Wakinekona, 461 U.S. 238, 250-51 (1983).

5 For all these reasons, plaintiff does not plausibly allege a deprivation of his rights under
6 the Due Process Clause based on defendant Mackey's alleged improper service of process or
7 defendant Brewer's alleged refusal to timely file plaintiff's judicial council forms. In addition, as
8 to Sheriff Moon and the County of Nevada, the third amended complaint contains only
9 conclusory assertions that plaintiff's injuries resulted from a failure to adopt policies for proper
10 service of process. Moreover, the third amended complaint fails to state a cognizable claim of a
11 constitutional deprivation in relation to the alleged deficient service of process. Without an
12 individualized constitutional violation, there can be no claim for policy deficiencies against the
13 County. See Bd. of Cnty. Comm'rs of Bryan Cnty., Okl. v. Brown, 520 U.S. 397, 403-04 (1997).

14 **2. Equal Protection**

15 To state a claim for a violation of equal protection, a plaintiff must generally allege the
16 defendants acted with an intent or purpose to discriminate against the plaintiff based upon
17 membership in a protected class, such as a particular race or religion. See Furnace v. Sullivan,
18 705 F.3d 1021, 1030 (9th Cir. 2013). To state a claim under a "class of one" theory, a plaintiff
19 must allege facts showing he "has been intentionally treated differently from others similarly
20 situated and that there is no rational basis for the difference in treatment." Village of
21 Willowbrook v. Olech, 528 U.S. 562, 564 (2000). A "class of one" plaintiff must allege
22 intentional, disparate treatment. Id. at 564-65. "Similarly situated" persons are those "who are in
23 all relevant respects alike." Nordlinger v. Hahn, 505 U.S. 1, 10 (1992).

24 Plaintiff has made only vague and conclusory allegations suggesting that he was treated
25 differently than other similarly situated individuals, and that the difference in treatment lacked a
26 rational basis. However, the third amended complaint does not identify any similarly situated
27 individuals or instances where a similarly situated individual was treated differently. Without
28 factual allegations showing that other individuals who were in all relevant respects like plaintiff

1 were treated more favorably without a rational basis, the amended complaint does not state a
2 claim for relief on equal protection grounds.

3 **V. CONCLUSION AND RECOMMENDATION**

4 For the reasons set forth above, the third amended complaint fails to state a cognizable
5 federal claim against any defendant.⁵ In the absence of a cognizable federal claim, the court need
6 not screen plaintiff's state law claims. See United Mine Workers of Am. v. Gibbs, 383 U.S. 715,
7 726 (1966) ("if the federal claims are dismissed before trial, ... the state claims should be
8 dismissed as well"). Although the court may exercise supplemental jurisdiction over state law
9 claims, plaintiff must first have a cognizable claim for relief under federal law. See 28 U.S.C. §
10 1367.

11 The undersigned has carefully considered whether further leave to amend should be
12 granted. See Lucas v. Dep't of Corr., 66 F.3d 245, 248 (9th Cir. 1995) ("Unless it is absolutely
13 clear that no amendment can cure the defect... a pro se litigant is entitled to notice of the
14 complaint's deficiencies and an opportunity to amend prior to dismissal of the action."). Plaintiff
15 has had two opportunities to amend, has not been able to state a claim, and it clearly appears no
16 cognizable claim can be stated on the underlying facts alleged. The undersigned concludes further
17 leave to amend would be futile. See California Architectural Bldg. Prod. v. Franciscan Ceramics,
18 818 F.2d 1466, 1472 (9th Cir. 1988) ("Valid reasons for denying leave to amend include undue
19 delay, bad faith, prejudice, and futility."); Klamath-Lake Pharm. Ass'n v. Klamath Med. Serv.
20 Bureau, 701 F.2d 1276, 1293 (9th Cir. 1983) (noting the court does not have to allow futile
21 amendments).

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24 ⁵ Plaintiff does not expressly seek relief from an order or judgment of the state court, and a
25 Rooker-Feldman analysis is unnecessary because plaintiff has not stated a claim. See Kougiasian
26 v. TMSL, Inc., 359 F.3d 1136, 1139 (9th Cir. 2004) (Rooker-Feldman doctrine "prohibits a
27 federal district court from exercising subject matter jurisdiction over a suit that is a de facto
28 appeal from a state court judgment."). Nevertheless, the undersigned notes a "prayer for relief in
the form of monetary and punitive damages... contingent upon a finding that the state court
decision was in error ... is precisely this sort of horizontal review of state court decisions that the
Rooker-Feldman doctrine bars." Cooper v. Ramos, 704 F.3d 772, 782 (9th Cir. 2012).

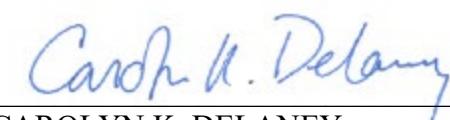
1 In accordance with the above, IT IS HEREBY RECOMMENDED as follows:

2 1. Plaintiff's third amended complaint (ECF No. 13) be dismissed without further leave to
3 amend for failure to state a claim.

4 2. The Clerk of the Court be directed to close this case.

5 These findings and recommendations are submitted to the United States District Judge
6 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
7 after being served with these findings and recommendations, any party may file written
8 objections with the court and serve a copy on all parties. Such a document should be captioned
9 "Objections to Magistrate Judge's Findings and Recommendations." Failure to file objections
10 within the specified time may waive the right to appeal the District Court's order. Martinez v.
11 Ylst, 951 F.2d 1153 (9th Cir. 1991).

12 Dated: June 28, 2024



13 CAROLYN K. DELANEY
14 UNITED STATES MAGISTRATE JUDGE

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